

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

In Re: Petition for Decertification

Plymouth State College-Operating Staff Unit

CASE NO. U-0606

DECISION NO. 79009

APPEARANCES

Representing the State Employees' Association:

Richard E. Molan, Assistant Executive Director

Representing the University System of New Hampshire,
Plymouth State College:

Gary Wulf, System Resources Administrator
Joan Tambling, Personnel Officer

Representing the Petitioning Employees:

Elizabeth W. Cheney, by letter

BACKGROUND

In late April 1979, according to evidence received by the Board and indicated by Evelyn LeBrun, Clerk of the Board, Elizabeth W. Cheney of Plymouth State College, a member of the Operating Staff Unit, attempted to contact Evelyn LeBrun at the Public Employee Labor Relations Board office to obtain information regarding petitioning for decertification. Because of the press of Board business and obligations outside the office, Miss Cheney was unable to reach Evelyn LeBrun until the last date for filing a petition for decertification, being 150 days prior to September 21, 1979, assumed to be the budget submission date. Because a filing of a petition was therefore impossible, Miss Cheney wrote a letter asking for an extension of time and the Public Employee Labor Relations Board, by unanimous vote, granted the extension on May 2, 1979 at its regular meeting in Concord. The petition for decertification was in fact received in Board offices May 8, 1979 being dated May 7, 1979, within the extension period. The petition was supported by 48 signature cards.

The State Employees' Association of New Hampshire, Inc. presently the exclusive bargaining representative of the employees in the bargaining unit, brought a motion to dismiss based on Rule 1, Section 1 and Section 1.2 of the Board's rules and on RSA 273-A:11 I(b) indicating that the rules and the statute require that a petition be timely filed and that an election be held "not less than 120 days prior to the budget submission date in the year such collective bargaining agreement shall expire."

The SEA also indicated that the budget submission date of the University System of New Hampshire is June 1, 1979 not September 21 as indicated by the University System of New Hampshire. For a discussion of the budget submission date of the University see Board Decision #79006.

The Board held a hearing on the matters raised and the motion to dismiss at the Board offices on May 22, 1979.

FINDINGS OF FACT AND RULINGS OF LAW

The Board affirms its former findings and fact and affirms the prior decision to allow an extension of time for filing the petition for decertification based on the actions found to have been neither the fault of the employee seeking information nor the fault of the Board but a confusion in communications. The Board would note the provisions of Board Rule 1.2 which reads in part, as follows:

"A petition for certification ... must be filed no earlier than two hundred ten (210) days and should be filed no later than one hundred fifty (150) days prior to the budget submission date of the effective public employer in the year that agreement expires, notwithstanding any provisions in the agreement for extension or renewal. Any petition filed later than one hundred fifty (150) days prior to the budget submission date of the affected public employer must be accompanied by an explanation of why the petition could not be filed sooner... "

The Board finds that there was sufficient explanation as to why the petition was not filed sooner and allows the petition as a valid submission to the Board under the rules. The Board would note that a decertification election is governed by the rule stated in Rule 1.2 under the provisions of Rule 1.4.

It was established at the hearing that the present contract between the State Employees' Association of New Hampshire, Inc. and Plymouth State College expires August 31, 1979. In addition at the hearing it was established that the parties agreed to proceed with the hearing with only two members present and waive their objections to that procedure.

The question of the budget submission date of the University System of New Hampshire has been one which has received great comment before this Board. In Decision No. 79006, this Board refused to make a finding as to the budget submission date of the University System but indicated that the intent of the law is to establish that date when the actual submission of the budget is made to the legislative body of the public employer. The law concerning budget submission dates is contained in RSA 273-A:1 III and IV, the latter section indicating that "each public employer shall record its budget submission date with the Board." This

section is read by the Board to indicate that the employer establishes the budget submission date in the first instance, if that date is not established elsewhere by statute. The only budget submission date filed with the Public Employee Labor Relations Board by the University System of New Hampshire is September 21. Indeed, in the context submitted, it was submitted as September 21, 1978 and there has been extensive testimony that there is only a budget submission on that date every two years. Nevertheless, the Board finds that as further set forth in RSA 273-A:3 II and RSA 273-A:11 I(b) and RSA 273-A:12, it is obvious that the date for budget submission serves many more purposes in the law than just the date for actual submission of a budget. That date is a key date to which many filing dates and time periods are keyed and, although the University System indicates that it submits a budget only every two years on that date, it would be absurd in the context of the labor relations scheme established by RSA 273-A to indicate that the University System of New Hampshire had only one budget submission date every two years. The Board, therefore, finds for the purposes of time periods under the statute, that the budget submission date of the University System of New Hampshire including Plymouth State College is September 21 of each year.

RSA 273-A:11 I(b) provides that "an election may be held not more than 180 nor less than 120 days prior to the budget submission date in the year such collective bargaining agreement shall expire." If the University System were to only have a budget submission date every two years, it would be impossible to have any election in the year when the contract in question in this case expires, namely 1979. This is clearly a result not contemplated by the statute.

The Board, therefore, finds that the petition having been timely filed, and the budget submission date being September 21 in the year the contract expires, namely 1979, that an election is proper. Difficulties in arranging for hearings and the extension granted to the employees earlier makes the holding of such an election within the 120 days prior to the budget submission date impossible. The Board finds, however, that, as with many of the time periods in the statute, the administration of the law must be made to fit its purposes. When there is doubt as to the choice of employees in a bargaining unit as has been raised properly in this case by the petition for decertification, and especially when there is a unit representation for which was established prior to the effective date of RSA 273-A:3, and given the special circumstances of this case, the setting of the election date prior to the 120 days and not the actual election prior to 120 days is found by the Board to be in keeping with the spirit of the law. An election, therefore, will be scheduled by the Board for June 12, 1979.

The Board is constrained to comment upon the participation in this case and the apparent actions of the System Resources Administrator, and other Administrative Personnel. Such personnel have no place in the decertification process and the Board warns management in this case as in all cases not to interfere with the actions of any employees either seeking to retain their exclusive bargaining representative or to decertify their exclusive bargaining representative. In addition, the Board finds and orders that pending the outcome of the election process, management is required to bargain in good faith with the exclusive bargaining representative and is not in any way relieved of its obligations so to bargain because there is a decertification petition.

The Board issues the following order:

ORDER

The Board finds the petition for decertification under the circumstances discussed to have been proper and orders an election among the employees in the Plymouth State College Operating Staff Unit to be held on June 12, 1979.

A handwritten signature in cursive script, appearing to read "Edward J. Haseltine", written over a horizontal line.

EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 24th day of May, 1979

Member Joseph Moriarty also present and concurring. Board Clerk Evelyn LeBrun and Board Counsel Bradford Cook also present.